Crl.A. 217/2003

BEFORE

HON'BLE MR JUSTICE P.G.AGARWAL

Heard Mr.J.Ahmed, learned counsel for the appellant and Mr. M.K. Saikia, learned P.P.Assam.

2. The appellant Md. Rubul Hoque @ Rabiul Islam stands convicted under Section 376 IPC for committing rape on a eight years' old girl Rumina Khatun (PW-1) and sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs.1000/-, in default in payment of fine, to undergo further imprisonment for three months.

3. The accused is a neighbour of PW-1 and on the fateful afternoon the accused too the victim girl aged about 8 years to a jungle to show cattle where he committed rape on the poor victim and cautioned her not to disclose the matter to her parents. The girl, however, immediately reported the matter to her parents as there was some bleeding from her private parts. Later on, the girl examined by the Doctors.

4. In the present case, the victim was aged about 8 years and this has been supported by the evidences of two Doctors namely, PW-4 Dr. Swapan Kumar Roy and PW-8 Dr. N.R.Barbhuyan. That apart, the age of the victim girl has not been disputed before us.

5. We have perused the testimony of the child witness (PW-1) and find that she has given a straight statement as to how this happened. Her evidence has not been demolished by way of cross- examination. Learned counsel for the appellant, therefore, submits that this may be a case of outraging of modesty under Section 354 IPC. In the present case, the victim has categorically stated as to how she was violated and on specific question in cross-examination the girl has proved the place where the penetration took place. In view of the above, we hardly find any substance in the submission that this is a case of outraging of modesty. In view of the materials available on record, the conviction of the accused appellant under Section 376 IPC is confirmed. The punishment for commission of offence of rape as provided in law is imprisonment for life or imprisonment for 10 years and this has been awarded in the present case. The learned counsel for the appellant, however, has submitted that some leniency may be shown to the accused considering his age. We find that the accused is a young boy and he was aged about 19 years of age when the incident took place. That apart, the accused is also a next door neighbour and that the above act was committed at the hit of the moment. On consideration of the facts and circumstances of the case and the age of the accused, we reduce the sentence to imprisonment for 6(six) years and to pay a fine of Rs.5000/-, in default in payment of fine, to undergo further imprisonment for three months.

With the above modification in sentence, the appeal stands disposed of.

Send down the record.